

APR 12 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GASPAR SOTO-RODRIGUEZ,

Defendant - Appellant.

No. 04-10548

D.C. No. CR-04-00185-SYI

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted April 5, 2006^{**}

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Gaspar Soto-Rodriguez appeals from the 33-month sentence imposed after he pled guilty to unlawful re-entry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Soto-Rodriguez contends that the district court erred in finding that his conviction under California Vehicle Code § 10851 qualified as an aggravated felony enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(C), because the California statute allows convictions based on aiding and abetting liability. Soto-Rodriguez's contention is foreclosed by our decision in *United States v. Vidal*, 426 F.3d 1011, 1015-17 (9th Cir. 2005).

AFFIRMED.